

# In the Indiana Supreme Court

IN RE MARION COUNTY       )  
MASS TORT LITIGATION     )  
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                                      )       **Supreme Court No. 49S00-0410-SJ-460**  
                                      )       **Case No. 49D02-9501-MI-1**  
                                      )       **in the Marion Superior Court, Civil Div. 2**

## **ORDER DENYING PETITION AND REMANDING TO TRIAL COURT**

On July 30, 2004, the Executive Committee of the Marion Superior Court, pursuant to IC 33-33-49-14(b), ordered the filing of all silica and silica-related personal injury cases in Marion Superior Court Two, Civil Division. That court is also addressing 1,923 asbestos related cases and has developed and implemented procedures designed to facilitate filings, notices and other steps in cases involving very large numbers of parties.

Some of the several defendants in the approximately forty silica cases filed motions for change of judge in forty of those cases pursuant to Ind.Trial Rule 76(B). On February 17, 2005, Marion Superior Court Two, Civil Division, the Honorable Kenneth H. Johnson, filed a petition: 1) asking this Court to grant an exemption from the application of the automatic change of judge provisions of Ind.Trial Rule 76(B) in relation to the silica cases pending in that court, and 2) asking this Court to deny the motions for change of judge pending in those cases. At the request of the defendants and the plaintiffs in these cases, we permitted the filing of consolidated briefs on the issues presented by the petition. Having considered the petition of the trial court and the briefs of the defendants and plaintiffs, we now conclude that the pending motions should be addressed by the trial court. Accordingly, the petition of the Marion Superior Court Two, Civil Division, should be DENIED and this cause remanded to Judge Johnson for ruling on the pending motions.

As pointed out by defendants, “[w]hen presented with a timely motion for a change of judge [under Ind.Trial Rule 76(B)], the trial judge is divested of jurisdiction to act in the case on any matter other than the motion for change of judge or emergency matters.” (citation omitted) *State ex rel. Wade v. Cass Circuit Court*, 447 N.E.2d 1082, 1083 (Ind. 1983). In an ordinary case a motion under Trial Rule 76(B) presents no issue for the trial court because Ind.Trial Rule 76(B)

directs that a change “shall” be granted. That rule, or its predecessors, predated the advent of multiple claims by large numbers of individual plaintiffs, presenting the courts with the need to administer groups of cases involving common questions of law or fact. Trial Rule 42(A) now recognizes the need for provisions addressing issues of multiparty litigation and specifically calls for special provisions in groups of cases involving “common questions of law or fact.” The policies underlying the provisions for addressing large groups of cases can under some circumstances conflict with the policies underlying Trial Rule 76(B). In addition, Trial Rule 1 contemplates interpretation of the Trial Rules to accomplish the speedy and economical administration of justice. The need for procedures to handle lawsuits of a scale not contemplated at the time the Trial Rules were adopted may under some circumstances preclude implementation of the mandate of Trial Rule 76(B). It is therefore necessary to determine whether the automatic application of Ind.Trial Rule 76(B) is appropriate in any situation in which large numbers of cases have been aggregated in a single court based on common issues of law or fact.

In the case of groups of cases involving common issues, the countervailing grounds may preclude granting motions under Trial Rule 76(B) for change of judge. If so, there is no mandatory change of judge under those circumstances. Judge Johnson should address the pending motions, and grant or deny them, in light of the considerations expressed in Trial Rules 1 and 42, as well as IC 33-33-49-14(b). Resolution of any conflict between Trial Rule 76(B) and the need for proper administration of cases involving common questions under Trial Rule 42(A) may turn on a large number of relevant factors best known to the trial court.

IT IS, THEREFORE, ORDERED that the petition of the Marion Superior Court Two, Civil Division, is hereby DENIED, and jurisdiction of these matters is remanded to the Hon. Kenneth H. Johnson to address the pending motions under Trial Rule 76(B).

DONE at Indianapolis, Indiana, this \_\_\_\_\_ day of June, 2005.

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Randall T. Shepard  
Chief Justice of Indiana

All Justices concur.